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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 283

BALTIMORE NATIONAL BANK,
Appellant,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

STATEMENT AS TO JURISDICTION.

EDWIN F. A. MORGAN,
GAYLORD LEE CLARK,
Counsel for Appellant.

SEMMES, BOWEN & SEMMES,
Of Counsel.

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IN THE

COURT OF APPEALS OF MARYLAND

APRIL TERM, 1935

General Docket No. 39.

STATE TAX COMMISSION OF MARYLAND,

vs.

BALTIMORE NATIONAL BANK.

STATEMENT AS TO JURISDICTION.

Baltimore National Bank, appellee, the applicant for appeal herein to the Supreme Court of the United States from the decree and judgment of the Court of Appeals of Maryland, dated July 17, 1935, and filed July 24, 1935, in accordance with the requirements of Rule 12, paragraph 1, of the Rules of the Supreme Court of the United States, herewith presents this separate typewritten statement as to the jurisdiction of the Supreme Court of the United States.

I.

Basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question.

The said decree of the Court of Appeals of Maryland is a final decree and judgment in the highest court of the State of Maryland in which a decision in the action could be had, where was drawn in question the validity of a certain statute of the United States, namely, the Reconstruction Finance Corporation Act as amended, and that the effect of the decree of the Court of Appeals of Maryland

was and is a decision against the validity of said statute, and where also was drawn in question the validity of certain statutes of the State of Maryland on the ground of their being repugnant to the Constitution of the United States and to certain statutes of the United States, namely, the Reconstruction Finance Corporation Act and the National Banking Act, and the decision was and is in favor of the validity of said statutes of the State of Maryland.

II.

Statutory provisions believed to sustain the jurisdiction.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States upon appeal to review the decree in question is Section 237 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, Chapter 229, 28 U. S. C. A. 344 (a), as in effect prior to and at the enactment of the Act of January 31, 1928, Chapter 14, 45 Stat. 54, 28 U. S. C. A. 861 (a), and of the amendatory Act of April 26, 1928, Chapter 440, 45 Stat. 466, 28 U. S. C. A. 861 (b), and as amended by and pursuant to the provisions of said two last mentioned Acts of 1928.

III.

Statute of the United States, the validity of which is involved.

The statute of the United States the validity of which is involved is the Reconstruction Finance Corporation Act as amended (Act of January 22, 1932, 47 Stat. 5, Title 15 U. S. C. A., Section 601, and in particular Section 610 thereof, 15 U. S. C. A., 1934 Cumulative Annual Pocket Part, page 86).

The provisions of Section 610, being the Act of January 22, 1932, Chapter 8, Section 10, 47 Stat. 9, so far as pertinent to this case, read as follows:

"Section 610. Obligations of corporation; exemption from taxation. * * * The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, * * * or by any State, county, municipality or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal or local taxation to the same extent according to its value as other real property is taxed."

The word "corporation" as used above refers to the Reconstruction Finance Corporation.

IV.

Statutes of the State of Maryland, the validity of which is involved.

The statutes of the State of Maryland the validity of which is involved are as follows:

Section 6 of Chapter 226 of the Acts of 1929, Bagby's Annotated Code of Maryland, 1929 Supplement, Article 81, Section 6 (6), page 478, reads as follows:

"6. The following property * * * shall be subject to assessment to the owner and taxation for ordinary taxes in this State and in the county and/or city specified below:

(6) All shares of stock in any national bank situated in this State, in the county and/or city where the holders thereof respectively reside, or if they be non-residents of this State, in the county and/or city in which the principal office of such bank is situated."

Section 10 of Chapter 226 of the Acts of 1929; Bagby's Annotated Code of Maryland, 1929 Supplement, Article 81, Section 10, sub-section (b) (1), page 484, reads as follows:

"The following shall be valued and assessed for the purposes of State, county and/or city taxation by the State Tax Commission; (1) shares of stock subject to taxation under this Article in any national bank located in this State * * *."

Section 15 of Chapter 226 of the Acts of 1929, Bagby's Annotated Code of Maryland, 1929 Supplement, Article 81, Section 15 (e), page 486, reads as follows:

"(e) Shares of stock assessable under this Section shall be taxed to the several owners thereof, and the taxes thereon shall be debts of such owners, but may be collected in each case from the bank * * *, which shall be bound to pay the same for account of its stockholders whether or not dividends are declared thereon, as if such corporations were the ultimate taxpayer; but may obtain reimbursement therefor from the respective stockholders, and may charge the same in reduction of any amounts due to the several shareholders as dividends or otherwise."

V.

Date of decree sought to be reviewed and date of application for appeal.

The opinion herein of the Court of Appeals of Maryland was dated June 18, 1935, and the decree and judgment of the Court of Appeals of Maryland sought to be reviewed was made the 17th day of July, 1935, and entered the 24th day of July, 1935, and was and is a final decision of the highest court of the State of Maryland.

The application for appeal was presented to the Honorable Carroll T. Bond, Chief Judge of the Court of Appeals of Maryland, on the 25th day of July, 1935, and said appeal was allowed the same day and was filed July 25, 1935.

VI.

Nature of the case and rulings of the court which bring the case within the jurisdictional provisions relied on.

Baltimore National Bank is a national bank incorporated under the laws of the United States. Reconstruction Finance Corporation, pursuant to the provisions of the Acts of Congress of March 9, 1933, Chapter 1, Section 304, 48 Stat. 6, as amended March 24, 1933, Chapter 8, Section 2, 48 Stat. 20, 12 U. S. C. A., 1934 Cumulative Annual Pocket Part, Section 51 (d), page 18, purchased all of the preferred stock of Baltimore National Bank, being ten thousand (10,000) shares of the par value of one hundred dollars ($100.00) each, aggregating one million dollars ($1,000,000), and was at the time of the assessment hereinafter referred to and still is the owner and registered holder thereof.

Section 51 (d), Title 12 U. S. C. A., above referred to, reads as follows:

> "51 (d). Preferred stock; subscription by Reconstruction Finance Corporation; sale of stock.—If in the opinion of the Secretary of the Treasury any national banking association or any State bank or trust company is in need of funds for capital purposes either in connection with the organization or reorganization of such association, State bank or trust company or otherwise, he may, with the approval of the President, request the Reconstruction Finance Corporation to subscribe for preferred stock in such association, State bank or trust company, or to make loans secured by such stock as collateral, and the Reconstruction Finance Corporation may comply with such request. Nothing in this section shall be construed to authorize the Reconstruction Finance Corporation to subscribe for preferred stock in any State bank or trust company if under the laws of the State in which said State bank or trust company is located the holders of such preferred stock are not exempt from double liability. In

any case in which under the laws of the State in which it is located a State bank or trust company is not permitted to issue preferred stock exempt from double liability, or if such laws permit such issue of preferred stock only by unanimous consent of stockholders, the Reconstruction Finance Corporation is authorized, for the purposes of this section, to purchase the legally issued capital notes or debentures of such State bank or trust company. The Reconstruction Finance Corporation may, with the approval of the Secretary of the Treasury, and under such rules and regulations as he may prescribe, sell in the open market the whole or any part of the preferred stock, capital notes, or debentures of any national banking association, State bank or trust company acquired by the corporation pursuant to this section. The amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized and empowered to issue and to have outstanding at any one time under existing laws is hereby increased by an amount sufficient to carry out the provisions of this section. As used in this section, the term 'State bank or trust company' shall include other banking corporations engaged in the business of industrial banking and under the supervision of State banking departments or of the Comptroller of the Currency. (Mar. 9, 1933, c. 1, Sec. 304, 48 Stat. 6, as amended Mar. 24, 1933, c. 8, Sec. 2, 48 Stat. 20.)''

The State Tax Commission of Maryland, pursuant to the provisions of Section 6, sub-section (6), Section 10, subsection (b) (1), and Section 15, all of Article 81 of the Annotated Code of Maryland, 1929 Supplement, pages 478, 484 and 486, respectively, above referred to, purported to assess for the purposes of State and local taxation all of said shares of preferred stock. Said purported assessment was made after full hearing and over the written protest of Baltimore National Bank; and at the hearing, and in which protest Baltimore National Bank contended said shares of preferred stock were not assessable for the pur-

poses of State and local taxation, because they were the property of Reconstruction Finance Corporation, an arm or department of the United States Government of America, and were therefore exempt from such assessment and taxation, since to assess or tax said shares was repugnant to and in violation of the Reconstruction Finance Corporation Act and in particular Section 610 of Title 15 U. S. C. A., above referred to, and the Constitution of the United States (*McCulloch* v. *Maryland*, 4 Wheat. 316) and the National Banking Act as last amended by an Act of Congress of March 25, 1926, Chapter 88, 44 Stat. 223, R. S. Section 5219, 12 U. S. C. A., 1934 Cumulative Annual Pocket Part, Section 548, pages 107 and 108.

Section 548 of Title 12 U. S. C. A., above referred to, insofar as it is pertinent reads as follows:

> "Title 12, U. S. C. A., Section 548. State Taxation.—The Legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or * * * provided the following conditions are complied with: 1 (a) the imposition by any State of any one of the above four forms of taxation shall be in lieu of others, except * * *. 2. The shares of any national banking association owned by non-residents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such non resident shareholders. 3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any sub-division thereof, to the same extent, according to its value, as other real property is taxed."

Pursuant to the provisions of the Acts of 1929, Chapter 226, Section 186 (a), being Section 186 (a) of Article 81 of Bagby's Annotated Code of Maryland, 1929 Supple-

ment, page 548, Baltimore National Bank appealed from said decree of the State Tax Commission of Maryland to the Circuit Court of Baltimore City, which court filed the following Memorandum of Opinion at the time it decreed the reversal of the order of the State Tax Commission of Maryland, to wit:

"At the hearing herein the provisions of Section 5219 of the Revised Statutes of the United States (Title 12 U. S. C. A., Section 548), and the provisions of the Reconstruction Finance Corporation Act as amended (Title 15 U. S. C. A., Section 601, and in particular 610 thereof), and the provisions of Article 81, Section 7 (22), of the Annotated Code of Maryland 1929 Supplement, were cited to the Court and relied upon. There was also cited McCulloch v. Maryland, 4 Wheaton 316. The action of the court is predicated upon its understanding of these authorities, and it is the intention of the court to make clear by this memorandum that the court is passing upon a Federal question.

"In spite of the language used by the Supreme Court in the case of National Bank of Redemption versus Boston, 125 U. S. 60, viz: 'All the shares of its capital stock' (being the shares of the capital stock of a national bank) are taxable 'without regard to their ownership', the court is of the opinion that in the instant case the shares of preferred stock of Baltimore National Bank owned by Reconstruction Finance Corporation are exempt from taxation by the State of Maryland or the Mayor and City Council of Baltimore City. The ground of the distinction relied upon by the court is that Reconstruction Finance Corporation is not merely an agency of the Federal Government in the sense that every national bank is such an agency, but said Reconstruction Finance Corporation is par excellence and *a fortiori* a governmental agency or perhaps might be designated as an emergency department or arm of the Federal Government. An appropriate order will be signed."

From the decree of the Circuit Court of Baltimore City the State Tax Commission of Maryland took an appeal to the Court of Appeals of Maryland in accordance with the provisions of the Acts of 1929, Chapter 226, Section 186 (b), being Section 186 (b) of Article 81 of Bagby's Annotated Code of Maryland, 1929 Supplement, pages 546 and 547, and there was argued in the Court of Appeals of Maryland and set forth in the briefs filed in said court in this cause the Federal questions hereinabove set forth.

This cause was before the Court of Appeals of Maryland on an agreed statement of facts and the court found the parties proper and the matter properly before it. Further, the court, in reversing the decree of the lower court, filed an opinion replete with citations of decisions of the Supreme Court of the United States and stated that "the provision of the Maryland Code exempting from State taxation any property exempted by the Constitution of the United States or by any Act of Congress (Code, Art. 81, Sec. 7, sub-sec. 22), only refers the question to the Federal law" to which law the court referred almost exclusively.

It is therefore believed that the Court of Appeals of Maryland could not have entered the decree which it did enter in this cause without a decision (a) against the validity of Section 610 of Title 15 U. S. C. A., namely, Reconstruction Finance Corporation Act, and (b) in favor of the validity of Section 6 (6), 10 (b) (1), and 15 of Article 81 of the Annotated Code of Maryland, 1929 Supplement, which are repugnant to the Reconstruction Finance Corporation Act and the Constitution of the United States and the National Banking Act.

Moreover, the decision in the instant case is directly contrary and opposed to the decision in the following cases, namely:

United States et al. v. *Lewis,* 10 Fed. Supp. 471.

This case was decided April 8, 1935, by a three-judge court in the District Court for the Western District of Kentucky, which court held that preferred stock owned by the Reconstruction Finance Corporation in eighteen national banks located in Kentucky was not subject to State and local taxation pursuant to the provisions of Kentucky Statute, Section 4092, which statute is similar to the sections of Article 81 of the Annotated Code of Maryland above referred to.

In re Opinion of the Justices, 177 At. 897.

This case was decided February 26, 1935, by the Supreme Judicial Court of Maine, wherein by a declaratory judgment the court declared that preferred stock of national banks located in Maine held by the Reconstruction Finance Corporation was not subject to taxation by the State of Maine pursuant to provisions of the Maine Revised Statutes of 1930, Chapter 12, Sections 76 and 77, which statutes are similar to the above named sections of Article 81 of the Annotated Code of Maryland.

VII.

Cases Believed to Sustain the Jurisdiction.

To sustain the jurisdiction of the Supreme Court of the United States, Baltimore National Bank relies on the following cases, among others, namely:

McCulloch v. *Maryland*, 4 Wheat. 316

Susquehanna Co. v. *State Tax Commission*, 283 U. S. 291

Baltimore Shipbuilding Co. v. *Baltimore*, 195 U. S. 375.

Fiske v. *Kansas*, 274 U. S. 380, 385

Dahnke-Walker Co. v. *Bondurant*, 257 U. S. 282, 288, 289

Ward & Gow v. *Krinsky*, 259 U. S. 503, 510

Cudahy Co. v. *Parramore*, 263 U. S. 418, 422

Bridge Proprietors v. *Hoboken Co.*, 1 Wall. 116, 144
McCullough v. *Virginia*, 172 U. S. 102, 116, 117
General Oil Co. v. *Crain*, 209 U. S. 211, 228
Corn Products Refining Co. v. *Eddy*, 249 U. S. 427, 432
Western Union Telegraph Co. v. *Kansas*, 216 U. S. 1, 3, 27
Poindexter v. *Greenhow*, 114 U. S. 270, 295

It is therefore respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 237 (a) of the Judicial Code, 28 U. S. C. A. 344 (a) as amended.

Should the Supreme Court of the United States find that an appeal in this case, pursuant to Section 237 (a) of the Judicial Code, has been improvidently sought and allowed as an appeal and that the proper mode of invoking a review is by a petition for certiorari, then and in that event Baltimore National Bank, your petitioner, prays that said appeal be not dismissed, but, in accordance with the provisions of Section 237 (c) of the Judicial Code, that the papers, whereon the appeal was allowed, be regarded and acted on as a petition for certiorari, as if duly presented to the Supreme Court of the United States at the time they were presented to the Chief Judge of the Court of Appeals of the State of Maryland, by whom the appeal in this case was allowed.

Respectfully submitted,

SEMMES, BOWEN & SEMMES,
EDWIN F. A. MORGAN,
GAYLORD LEE CLARK,
Solicitors for Baltimore National Bank.

Filed July 25, 1935.